

THE DEFENDER



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JUNE 2011

BIG WIN FOR OPEN GOVERNMENT

The state's public records law will be getting a makeover thanks to a push from the ACLU, other open govern-

ment advocates, the Shumlin administration, and a legislature that saw the need for greater government transparency.

The key provision of H. 73 adds an enforcement mechanism lacking since the original public records law was passed in 1976. Citizens or organizations that have to go to court to force the release of a public document, and win, will now have their attorneys fees and costs reimbursed.

Up to now, judges have had the discretion to order

reimbursements, but they've rarely done so.

Another open government bill (S. 67) that would have made significant changes to the open meeting law passed the Senate but bogged down in the House. Legislative

leaders have promised that bill will be



Paul Wright of Prison Legal News testifies on public records access before the House Government Operations Committee.

taken up again when the session resumes next year.

A third open government bill, on campaign finance (S. 20), was shelved in the Senate after long discussions on campaign contribution limits and disagreement over banning corporate contributions.

The campaign finance bill must be dislodged from the Senate Rules Committee before it can be worked on again next year.

Major changes to public records law

- Fees and costs to plaintiffs who prevail in public records litigation
- Redaction of exempt information as alternative to withholding of entire record
- Assurance of accessibility for records requestors with a disability
- Creation of a study committee to review the law's 240-plus exemptions



WHAT HAPPENED AT THE STATEHOUSE

It was a busy year in the legislature this session. Read our summary of bills on page 3; an expanded version is online at www.acluvt.org.

BUSY IN THE COURTS

The ACLU has filed *amicus* briefs in two cases before the Vermont Supreme Court: — Privacy of education tax "prebate" information. — Restrictions on warrants for computer searches.

We are also considering an appeal of a Superior Court ruling denying access to public records held by the Hartford Police Department.

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FROM THE EXECUTIVE DIRECTOR

Allen Gilbert, Executive Director

A last-minute add-on to the annual miscellaneous education bill will, for the first time, give Vermont school officials the authority to discipline students for bullying and harassment that takes place outside of school.

Discipline of children is generally the responsibility of parents. But the new provisions take the approach that when there is a “nexus” between out-of-school misconduct and a bullied victim’s ability to access school programs, school authorities may intervene, up to the point of expelling the alleged bully from school.

The ACLU was successful in having the bar for discipline follow the standard in the U.S. Supreme Court’s landmark *Tinker v. Des Moines* decision. A bully’s

misconduct must be shown “to pose a clear and substantial interference with another student’s equal access to educational programs.”

However, the House Education Committee — which pushed the language onto the miscellaneous ed bill when a stand-alone bill wasn’t moving forward — rejected our suggestion that parents be specifically included in discipline decisions for out-of-school misconduct.

The new bullying law was long sought by the state Human Rights Commission and urged by some education groups. “Cyber-bullying” has risen to national attention, with tragic results in some cases.

The bill engendered a lively debate on the House floor in the waning days of the legislature.

Critics pointed out schools are shouldering responsibilities that in the past others have handled. Increasingly, schools have become regulators of last resort. This places a heavy burden on administrators as they are forced to navigate difficult, sensitive areas — areas where legal expertise is needed and the exercise of their extended authority is challenging.

The ACLU-VT has fought hard to protect the principle that every child has an equal right to access education opportunities. Funding cannot hinder equity; neither can other students’ actions. Yet we recognize that important rights of parental authority and free speech must be protected.

We will be watching this extension of school authority closely.

BIDS FOR LIBERTY



Rumpelstiltskin was onto something. It may not be spinning straw into gold, but you can transmute items you put up for bid on eBay into financial support for the ACLU of Vermont.

We participate in eBay’s charitable Giving Works program. You can help in one of the following ways:

Give when selling on eBay. When listing items, eBay sellers can simply designate us as the recipient of a portion of the proceeds from their sales (10%, 100%, or something in between).

An anonymous seller recently did this as thanks for help he’d received from the ACLU 40 years earlier!

Give when buying on eBay. Buyers through eBay can also easily support the ACLU-VT. Just register us as a favorite nonprofit. Then every time you buy an item, you’ll have a chance to donate at checkout.

Or, give outright on eBay. You can even just make a donation through the Giving Works program (of course, you can also give online at www.acluvt.org via the “Donate Now” button).

These eBay giving options can be found at <http://www.ebaygivingworks.com/> (search for our page using “American Civil Liberties Union Foundation of Vermont, Inc.” in the nonprofit box on the left).

Vermont live auction items also sought. Even if you don’t participate online, you can still help by donating quality items to our annual live auction.

For more information about any of these options, please contact the ACLU office: info@acluvt.org; 802-223-6304 x114.

2011 LEGISLATIVE SUMMARY



There was a new energy in the legislature, a sense that novel ideas could be explored and passed into law. The result was a productive session that led to at least one trail-blazing bill — health care — and a slew of other bills, many with important civil liberties implications.

Passage of the public records bill is featured on page 1. Other highlights include:

Human trafficking bill approved (H. 153). Slavery is not extinct; labor is forced from people who are transported thousands of miles to work in both legal and illegal trades. This bill bans trafficking and imposes stiff fines.

Medical marijuana dispensaries established (S. 17). Marijuana is legal for

therapeutic purposes for certain illnesses, yet obtaining marijuana has been hard for those who need it. This bill establishes a system of dispensaries in different parts of the state.

National popular vote system ratified (S. 31). Vermont will join other states in moving toward a national voting system that guarantees the presidential candidate with the most votes wins.

New birth certificates made available for transgendered individuals (S. 15). A provision added to a midwifery services bill allows transgendered individuals to get new birth certificates showing their changed gender identity.

Schools' discipline reach extended (S. 100). School officials were given authority

to discipline students for out-of-school misconduct such as “cyber-bullying.”

Equity in school funding preserved (H. 436). A last-minute addition to the House’s miscellaneous tax deal that would have carved out a special deal for a limited number of towns was dropped.

Vanity plate restrictions eased (S. 94). A recent court case prompted the loosening of many restrictions placed on what drivers can “say” on a custom-made license plate.

Death with dignity bill held up (H. 274/S. 103). Efforts to guarantee that individuals with terminal illnesses have control over end-of-life decisions did not gain the support legislative leaders sought before moving the bill forward.

BOOK REVIEW

The Last Face You'll Ever See: The Private Life of the American Death Penalty, by Ivan Solotaroff, HarperCollins, 2001

Former state legislator Cornelius Granai observed an execution by electric chair in 1932. Those of us who later heard him talk about it never forgot his wrenching account. He'd attended because he'd been the prosecutor in the Vermont murder case. He believed it behooved him to see the death sentence administered.

Author Solotaroff does not take a position on the death penalty. He explains why he wrote the book by quoting Camus: “[We] must show the executioner’s hands each time and force everyone to look at them.... Otherwise society

admits that it kills without knowing what it is saying or doing.”

The Last Face You'll Ever See gives a firsthand view of those who administer state executions in America. It is a compelling chronicle, reminiscent of the non-fiction narratives of Tracy Kidder.

Readers enter the world of the condemned. Solotaroff focuses on the executioners as well as those whose deaths they carry out. Included are portraits of prosecutors, inmates, prison guards, and wardens.

We spend time in Mississippi’s Parchman State

Penitentiary and its gas chamber (lethal injection has been used since 2002). It’s painful to read about this grim domain.

Vermont’s last execution was in 1954. Granai’s experience as a witness to death meted out by the state turned him permanently and vocally against capital punishment. In Solotaroff’s book, readers join as witnesses to the irrevocable price the executed pay and to the toll taken on the agents of state-sanctioned death.

— Reviewer Andrea Warnke is associate director of the *ACLU of Vermont*.

NOMINATIONS

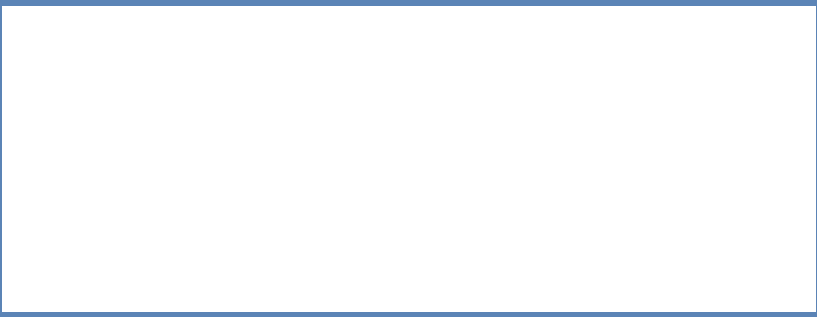
A slate of nominees for the ACLU-VT Board of Directors is put forth by our Nominating Committee, but any member can also gain nomination through a petition signed by 10 members. Petitions must be submitted to the ACLU office by Aug. 1. Elections take place in the fall, through ballots in our September newsletter.

SAVE THE DATE

This year’s annual meeting is scheduled for Saturday, October 29 in Montpelier. Watch for details in the September edition of *The Defender*.

BEQUEST

The ACLU has received a special bequest from the estate of Margot George of Montpelier to support civil liberties work in Vermont. Margot was active in many organizations and activities in the Montpelier area.



For an audio or large-print version of this newsletter at no charge, contact us at (802) 223-6304 x411 or info@acluvt.org.



Franklin town meeting starts with a prayer. Moderator Tim Magnant is at left, the Rev. Jason McConnell at right. (St. Albans Messenger photo)

PRAYER AT MEETING CHALLENGED

The ACLU-VT has sued the town of Franklin for including prayer in its town meeting. The lawsuit, filed on behalf of Marilyn Hackett, a Franklin resident, alleges that the town and its moderator, Timothy Magnant, have violated Vermont's constitution and public accommodations act.

For the last decade, Franklin's meeting has been gavelled to order, the polls declared open for any Australian ballot items, and the pledge of allegiance recited. Then, the moderator has invited a local minister to lead the voters in prayer.

Julie Kalish of Norwich, an ACLU-VT cooperating attorney representing Hackett,

explains that "Article 3 of the Vermont Constitution guarantees no one may be compelled to attend or support religious worship. The problem is the defendants insist upon including prayer as part of town meeting even though voters like Ms. Hackett must attend town meeting in order to vote on all the warned items."

Working with Kalish as an ACLU cooperating attorney is Bernie Lambek of Zalinger Cameron & Lambek, P.C. of Montpelier. Lambek put the case in historical perspective: "The Vermont Constitution reflects the fact that from early in our history, this has been a place where everyone's beliefs can co-exist, whether religious or irreli-

gious. Both Article 3 of our constitution and our more recent public accommodations act ensure government officials do not use their authority to promote one religious belief over another, or religious beliefs over secular beliefs. Vermonters are tolerant and diverse."

Hackett has tried to get the town and the moderator to change the practice, but to no avail. Last year the town told her that prayer would be kept out of the meeting, but once the meeting was underway, the moderator had the minister pray anyway.

The complaint, filed in Superior Court, can be found on the ACLU-VT Web site at www.acluvt.org/legal/docket.

"...that no person ought to, or of right can be compelled to attend any religious worship, or erect or support any place of worship, or maintain any minister, contrary to the dictates of conscience..."

Vermont Constitution, Article 3